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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,227	08/05/2003	Don E. Juliano	48916-01010	6517

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EXAMINER	
LHYMN, EUGENE	

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,227	JULIANO ET AL.	
	Examiner	Art Unit	
	Eugene Lhymn	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-29, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Krupa et al. (US 5456379). With respect to claim 1, Krupa discloses the following:

- A lower tray portion (Fig. 1 below)
- An upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig. 1 below)
- One or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, wherein each of the one or more standoffs providing a friction coupling adapted to minimize movement of the upper lid portion relative to the lower tray portion (Fig. 1 below)

With respect to claim 2, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the lower tray portion being adapted to at least

partially enclose objects positioned therein. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 3, Krupa discloses one of more standoffs comprising a first and second member (Fig. 1 below).

With respect to claim 4, Krupa discloses the first member of the standoff being coupled to the upper lid portion (Fig. 1 below).

With respect to claim 5, Krupa discloses the second member of the standoff being coupled to the lower tray portion (Fig. 1 below).

With respect to claim 6, Krupa discloses the first member being adapted to be coupled to the second member to provide a frictional coupling.

With respect to claim 7, Krupa discloses the friction coupling being a snap coupling.

With respect to claim 8, it has been held that method limitations in a product claim do not serve to patentably distinguish the claimed product from the prior art. See *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Thus, even though a product-by-process claim is limited and defined by a process, determination of patentability is based on the product itself. Accordingly, if the product in a product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. *Thorpe*, 777 F.2d at 697, 227 USPQ at 966; *In re Marosi*, 710 F2.d 799, 218 USPQ 289 (Fed. Cir. 1983).

With respect to claim 9, Krupa discloses the following:

- A lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein (Fig. 1 below)
- An upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig. 1 below)
- One or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, each of the one or more standoffs comprising a first and second member which providing a snap-coupling adapted to minimize lateral movement of the upper lid portion relative to the lower tray portion while preventing inadvertent separation of the upper lid portion from the lower tray portion (Fig. 1 below)

With respect to claim 10, Krupa discloses the lower tray portion including a plurality of enclosure rows, as shown in Fig. 1.

With respect to claim 11, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the lower tray portion being adapted to hold cookies. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 12, Krupa discloses the lower tray portion including three enclosure rows.

With respect to claim 13, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Krupa which is capable of being used in the intended manner, i.e., the rows being adapted to hold 8 cookies each. There is no structure in Krupa which would prohibit such functional intended use (see MPEP 2111).

With respect to claim 14, Krupa discloses the first member of the standoff having an annular ridge and insertion neck (Fig. 1 below).

With respect to claim 15, Krupa discloses the second member of the standoff including a securement void (Fig. 1 below).

With respect to claim 16, Krupa discloses at least a portion of the annular ridge and insertion neck being positioned in the securement void.

With respect to claim 17, Krupa discloses the following:

- a lower tray portion (Fig. 1 below)
- an upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig.1 below)
- a multi-angle seal, wherein at least one surface of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal provides a resistive force

when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one surface of the multi-angle seal provides resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, as shown in Fig. 1

With respect to claim 18, Krupa discloses the multi-angle seal being formed from at least a portion of the perimeter of the upper lid portion (Fig. 1, items 116 & 118).

With respect to claim 19, Krupa discloses the multi-angle seal being formed from at least a portion of the perimeter of the lower tray portion (Fig. 1, items 52 & 48).

With respect to claim 20, Krupa discloses the multi-angle seal having a first and second member (lid and tray portion).

With respect to claim 21, Krupa discloses the first and second member cooperatively interacting (Fig. 4).

With respect to claim 22, Krupa discloses the first member (items 52 & 48) including at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one surface of the multi-angle seal providing resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein

the inherent frictional interface of the multi-angle seal meets the aforementioned limitations.

With respect to claim 23, Krupa discloses the second member (items 116 & 132) including at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal providing a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one surface of the multi-angle seal providing resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the aforementioned limitations wherein the frictional interface will provide resistance when the container is closed and opened, and the perimeter shoulders provide resistance to lateral movement.

With respect to claim 24, Krupa discloses the following:

- a lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein;
- an upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion;
- a multi-angle seal adapted to facilitate the secure coupling of the upper lid portion and the lower tray portion, the multi-angle seal being formed from at least a

portion of the perimeter of the upper lid portion and at least a portion of the perimeter of the lower tray portion, wherein at least one surface of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one angle of the multi-angle seal provides resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the aforementioned limitations wherein the frictional interface will provide resistance when the container is closed and opened, and the perimeter shoulders provide resistance to lateral movement.

With respect to claim 25, Krupa discloses the multi-angle seal having a first and second member.

With respect to claim 26, Krupa discloses the first member having a compression (52), tension (52), and lateral sealing surface (48).

With respect to claim 27, Krupa discloses the second member having a compression (132), tension (132), and lateral sealing surface (118).

With respect to claim 28, Krupa discloses the compression sealing surface of the first member engaging the compression sealing surface of the second member, the

tension sealing surface of the first member engaging the tension sealing surface of the second member, and the lateral sealing surface of the first member engaging the lateral sealing surface of the second member, as shown in Fig.'s 1, 4, and 5.

With respect to claim 29, Krupa discloses wherein one or more of the sealing surfaces of the first and second member comprise transverse surfaces that provide a combination of resistance to lateral forces and either compressive forces or tensile forces.

With respect to claim 33, Krupa discloses the following:

- a lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein;
- an upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion;
- one or more standoffs positioned between the lower tray portion and the upper lid portion to maintain a desired displacement between the a top surface of the upper lid portion and a bottom extremity of the lower tray portion, wherein each of the one or more standoffs comprise a first and second member which providing a snap-coupling adapted to minimize lateral movement of the upper lid portion relative to the lower tray portion while preventing inadvertent separation of the upper lid portion from the lower tray portion;
- a multi-angle seal adapted to facilitate the secure coupling of the upper lid portion and the lower tray portion, the multi-angle seal being formed from at least a

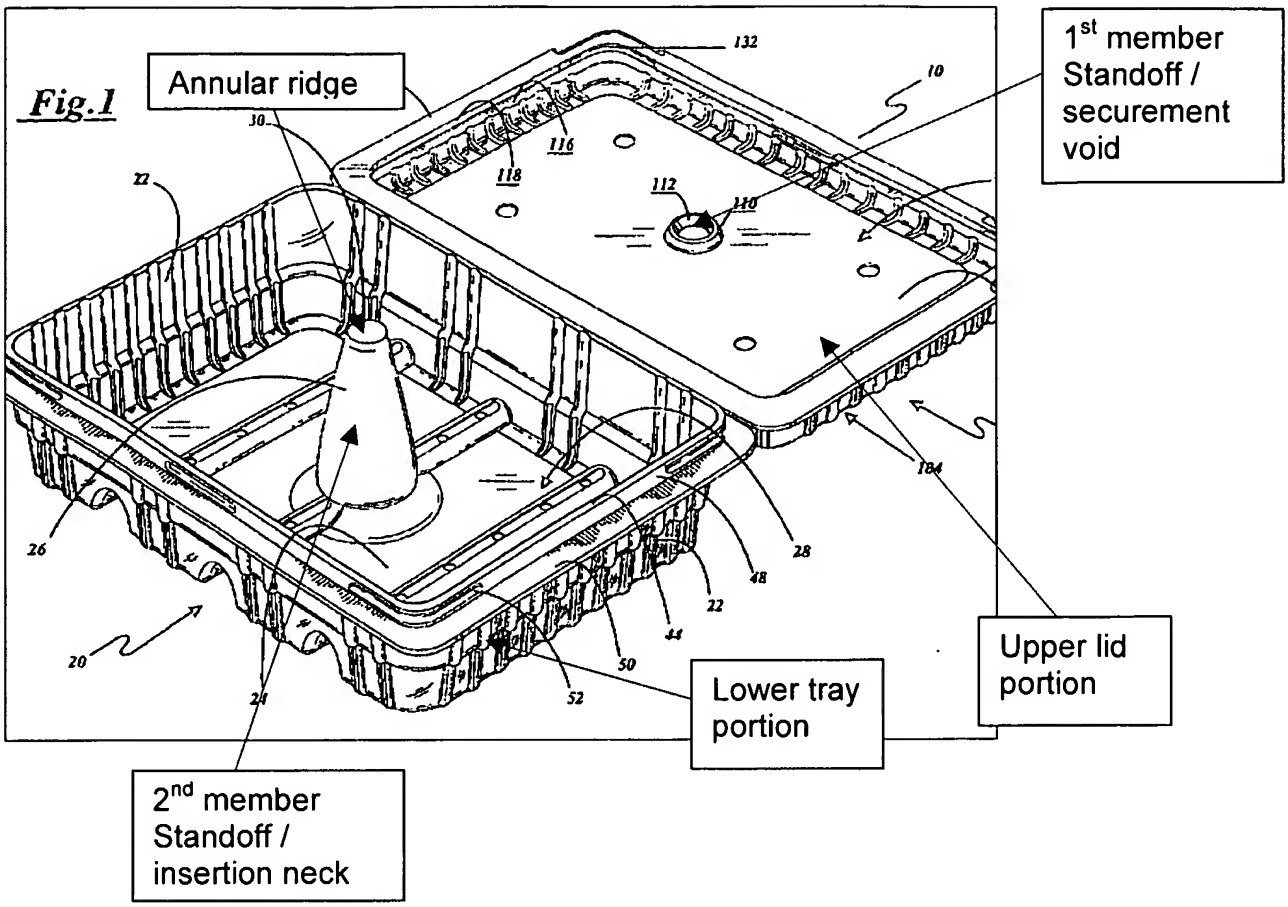
portion of the perimeter of the upper lid portion and at least a portion of the perimeter of the lower tray portion, wherein at least one angle of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced together, at least one angle of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one angle of the multi-angle seal provides resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another, wherein Fig.'s 1, 4, and 5 show the interface and structure of the multi-angle seal, items 52, 48, 116, 132, wherein the inherent frictional interface of the multi-angle seal meets the aforementioned limitations wherein the frictional interface will provide resistance when the container is closed and opened, and the perimeter shoulders provide resistance to lateral movement.

3. Claims 24 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMars (US 5409126). With respect to claim 24, DeMars discloses the following:

- a lower tray portion, the lower tray portion being configured to at least partially enclose objects positioned therein (Fig. 3)
- an upper lid portion, the upper lid portion being configured to overlay and be securely coupled to the lower tray portion so as to substantially enclose objects positioned between the lower tray portion and the upper lid portion (Fig. 3)

- a multi-angle seal adapted to facilitate the secure coupling of the upper lid portion and the lower tray portion, the multi-angle seal being formed from at least a portion of the perimeter of the upper lid portion and at least a portion of the perimeter of the lower tray portion, wherein at least one surface of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced together, at least one surface of the multi-angle seal provides a resistive force when the lower tray portion and the upper lid portion are forced in opposite directions, and wherein at least one angle of the multi-angle seal provides resistive force to minimize lateral movement of the lower tray portion and the upper lid portion relative to one another (Fig. 3)

With respect to claim 32, DeMars discloses the container being airtight (Col. 3, Line16).



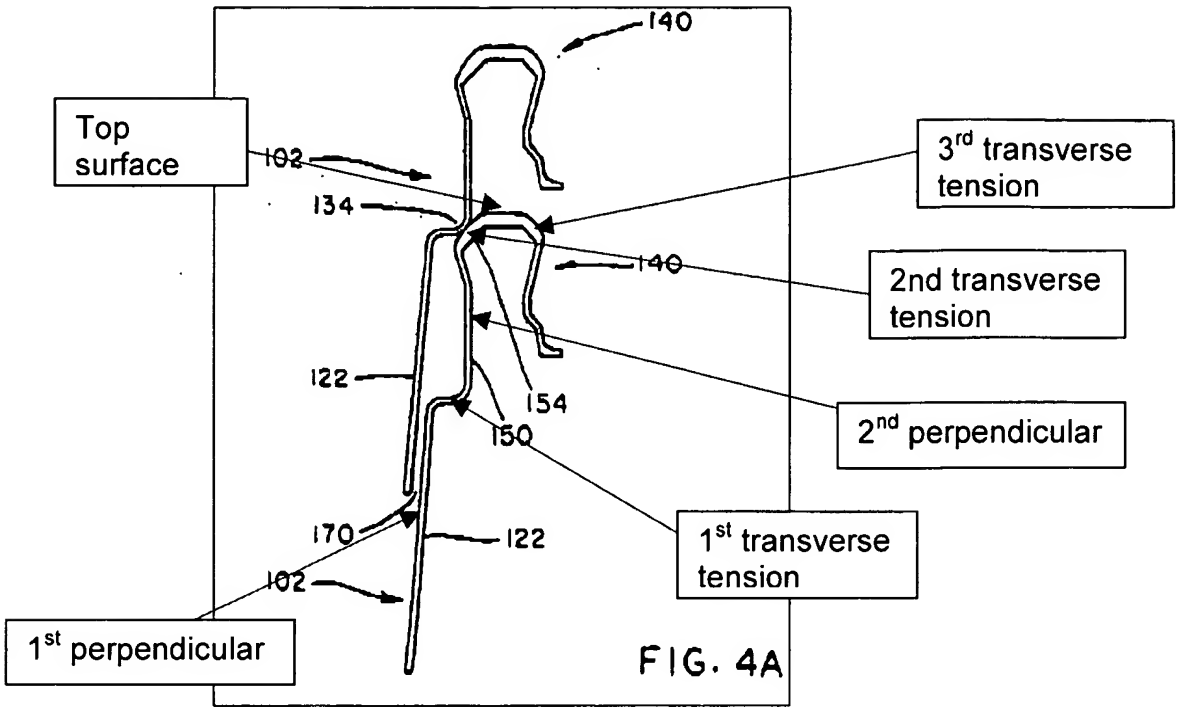
Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krupa in view of Tucker et al. (US 6910599 B2). With respect to claims 30 and 31,

Krupa discloses the claimed invention except for the first and second member including a first transverse compression sealing surface, a first perpendicular surface, a transverse tension sealing surface, a second perpendicular surface, a second transverse compression sealing surface, a top surface, and a third transverse sealing surface. However, Tucker et al. teaches a container having a first and second member including a first transverse compression sealing surface, a first perpendicular surface, a transverse tension sealing surface, a second perpendicular surface, a second transverse compression sealing surface, a top surface, and a third transverse sealing surface, as shown in Fig. 4A below. Having a configuration as such provides a reliable means of maintaining the container is a closed configuration. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the multi-angle seal of the container of Krupa as is taught by Tucker et al. so as to provide a reliable means of maintaining the container is a closed configuration.



Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fiore Jr. (US 6571946 B2)

Yu (US 6193089 B1)

Zettle et al. (US 2002/0148845 A1)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jes F. Pascua

JES F. PASCUA
PRIMARY EXAMINER